

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THEODORE SIMPKINS

Plaintiff,

v.

SOUTHERN WINE AND SPIRITS
OF AMERICA, INC., et al.,

Defendants.


No. C-10-02353-EDL

ORDER CONTINUING HEARING ON
DEFENDANTS' MOTIONS TO DISMISS

This is a complaint for declaratory relief and damages that was removed to this Court on May 28, 2010 on the basis of fraudulent joinder. On June 1, 2010, Defendants filed a Motion to Dismiss Pursuant to the First-to-File Rule, and on June 7, 2010 also filed a Motion to Dismiss Pursuant to Rule 12. On June 10, 2010, Plaintiff filed a Motion to Remand on the basis that the non-diverse defendant was properly named and therefore this Court lacks diversity jurisdiction over this matter. The three motions are set for hearing on July 20, 2010.

Because the Court's resolution of Plaintiff's Motion to Remand could obviate the need for it to consider Defendants' Motions to Dismiss, the Court finds it appropriate to continue the hearing on Defendants' motions until after its resolution of the remand motion. While there is some overlap between the issues raised in the Motion to Remand and the Motion to Dismiss Pursuant to Rule 12, the Court finds that judicial efficiency will be served by hearing the remand motion first. In making this determination, the Court expresses no view whatsoever on the merits of any of the three motions pending before it. If Plaintiff's Motion to Remand is denied, Defendants' Motions to Dismiss will be promptly re-set on the Court's calendar.

Dated: July 7, 2009


ELIZABETH D. LAPORTE
United States Magistrate Judge